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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 752

JOHN W. GARDNER, SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
Appellant-Respondent,

v.

THE STATE OF ALABAMA, for and in Behalf of and as Trustee for the DEPARTMENT OF PENSIONS AND SECURITY OF THE STATE OF ALABAMA, ET AL.,
Appellee-Petitioner.

(This Petitioner is Joined by Sarah Harton, Emma Morton, Louise Jones and Addie Kelly as Additional Petitioners.)

United States Court of Appeals for the Fifth Circuit,
No. 24,468.

Petition of the State of Alabama to Review the Decision, Directive or Order of Honorable John W. Gardner, Secretary of the Department of Health, Education and Welfare of the United States, Dated January 12, 1967.

United States Court of Appeals for the Fifth Circuit.
No. 24,561.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

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In addition to the jurisdictional questions discussed in which we contend that the United States District Court, Northern District of Alabama, had jurisdiction and that the Court of Appeals erred in holding otherwise, we think the reasons relied on for allowance of the writ, as far as these questions are concerned, have been amplified in the foregoing sections of this petition, and we adopt with leave of this court such amplification particularly set out under section or subsection (e) above 35

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JOHN W. GARDNER, SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
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To the United States Court of Appeals for the Fifth Circuit.

The State of Alabama, for and in behalf of and as Trustee for the Department of Pensions and Security of the State of Alabama (and Sarah Harton, Emma Morton, Louise Jones and Addie Kelly added as parties plaintiff in the action in the United States District Court, Northern District of Alabama, Southern Division, suing for

themselves and for a class, all the beneficiaries under the State's welfare programs, by an amendment to the complaint in the United States District Court, Northern District of Alabama, Southern Division, from which one of these two consolidated cases originated [amendment appearing at page 70 of the record on appeal to the United States Court of Appeals for the Fifth Circuit from the District Court]) prays that a writ of certiorari be issued to review the judgments of the United States Court of Appeals for the Fifth Circuit, entered in the above styled cause on August 29, 1967.

1.

(a) **A Reference to the Official and Unofficial Reports of the Opinions Delivered in the Court Below.**

No formal opinion was written by the District Court in the case before it. The judgment of the District Court (including findings of fact and conclusions of law) was rendered February 3, 1967, is shown at page 77 of the printed record and is appended hereto as Appendix A. The order or directive of the Honorable John W. Gardner, Secretary of Health, Education and Welfare of the United States, dated January 12, 1967, cutting off the state's welfare funds is appended as Appendix B. The opinion of the United States Court of Appeals in the two cases, dated August 29, 1967, is appended as Appendix C. It has not been officially reported. On August 29, 1967, the Court of Appeals rendered judgment vacating and setting aside the preliminary injunction of the District Court and decreeing that the order of the Secretary of Health, Education and Welfare be enforced in accordance with the views expressed in the opinion of the Court, Transcript of Record, Volume II, pp. 146-148. Such judgment or judgments were rendered in both of the two cases, consolidated for hearing in the Court of Appeals.

(b) **A Concise Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked:**

On January 12, 1967, the Secretary made an order or directive for the cutting off of all welfare funds under the State's welfare programs, shown in Volume II, Appendix to the Brief of the Appellant-Respondent, at p. 273. The State filed a complaint on January 13, 1967, in the United States District Court, Northern District of Alabama, Southern Division, and moved and prayed for a preliminary injunction. Also, on or about January 16, 1967, the State filed a motion with the Secretary himself for postponement of the effective date of the action taken by him on January 12, 1967, cutting off federal financial assistance. This the Secretary was authorized to grant under § 705, Title 5, United States Code, but he refused the stay. Thereafter, the State obtained a setting of the matter for a hearing for the preliminary injunction in the District Court. On February 1, 1967, this hearing was held, affidavits were submitted as evidence, as shown by the record, a copy of the proceedings on the administrative hearing before a hearing examiner in Washington, D. C., was introduced, and the case submitted. This resulted in the judgment or decree of February 3, 1967, above mentioned, page 77 of the printed record, enjoining the Secretary from cutting off financial assistance to the State and the State Department under Alabama's welfare programs. An appeal was taken in the Court of Appeals, the Secretary insisting principally that the District Court had no jurisdiction to review the action of the Secretary following the administrative hearing, or to enjoin the Secretary's action. The Secretary, by motion to dismiss and brief in the Court of Appeals, contended that § 1316, Title 42, United States Code, vested jurisdiction to review the Secretary's action under all five of Alabama's welfare programs solely by a direct proceeding in the United States Court of Appeals for the Fifth Circuit. We contend

otherwise. That section, **if applicable**, provides for review by a petition in the United States Court of Appeals within sixty days from the Secretary's action and accordingly, as a matter of precaution, the State filed on or about February 18, 1967, its petition for a review (petition without exhibits shown at p. 10 of the Supplemental Transcript of the Record, and also shown in appendix to brief of the State in the Court of Appeals). The exhibits to the petition, omitted from the place in the record at which the petition is shown, because otherwise shown in the record, are outlined (with citation to the printed record) at page i of appendix to the brief of the State. Subsequently, on motion of the State to docket the case made by the petition as a separate proceeding and to consolidate it with Case No. 24468 (the Appeal from the District Court) [Supplemental Transcript p. 7], this motion was granted and the two cases consolidated [Supplemental Transcript p. 15]. The petition to review in the Court of Appeals was filed to guard against a possible holding (which has now occurred) that only the Court of Appeals had jurisdiction, and in order to attempt to insure that Alabama and the beneficiaries under its welfare programs would obtain a review by some proceeding. On September 25, 1967, Honorable Walter Gewin signed and filed an order [Supplemental Transcript p. 16] staying the mandate of the Court of Appeals and enforcement and execution of its judgment pending review by this Court on petition for certiorari, shown at page 16 of the Supplemental Transcript. The jurisdiction of this Court is invoked under 28 U. S. C., § 1254 (1).

(i) The date of the judgment or decree sought to be reviewed and the time of its entry.

The judgment or judgments of the Court of Appeals sought to be reviewed are dated and entered on August 29, 1967.

(ii) The date of any order respecting a rehearing and the date and terms of any order granting an extension of time within which to file petition for certiorari: None.

(iii) The statutory provision believed to confer jurisdiction on this Court to review by writ of certiorari has already been stated (28 U. S. C., § 1254 (1)).

(c) **Questions Presented for Review.**

A.

(1) Whether a federal court of appeals has exclusive jurisdiction "by implication" to review a determination by the Secretary of Health, Education and Welfare for which no authority to review is expressly granted by 42 U. S. C., § 1316, so as to preclude jurisdiction in a district court to review such determination under the Administrative Procedure Act.

(2) Whether the absence of jurisdiction by a court of appeals to review a determination by the Secretary of Health, Education and Welfare to discontinue payment of assistance under one program of the Social Security Act renders statutory review in the Court of Appeals of determinations as to other programs "inadequate".

(3) Whether a federal court of appeals has exclusive jurisdiction under 42 U. S. C., § 1316 and section 603 of the Civil Rights Act of 1964 to adjudicate the validity of regulations issued by the Secretary of Health, Education and Welfare so as to preclude the exercise of jurisdiction by a district court of a suit for a declaration of the invalidity of such regulations on the ground that they exceed the Secretary's statutory authority.

(4) Whether private individuals who are recipients of financial assistance administered under the Social Security Act are "persons aggrieved" within the meaning of section 603 of the Civil Rights Act of 1964.

B.

(1) Whether the action of the Secretary in cutting off Federal financial assistance in this case transcends the authority given him, or the Department of Health, Education and Welfare, under the Civil Rights Act of 1964.

(2) Whether said action transcends the regulations of the Department of Health, Education and Welfare.

(3) Whether the regulations of the Department of Health, Education and Welfare in the respect involved in said action were consistent with the objectives of the act or acts providing financial assistance.

(4) Whether requiring the cutting off of said financial assistance was consistent with the objectives of the act or acts providing for such financial assistance.

(5) Whether requiring the assurance that third parties would desegregate all of their facilities was consistent with the objectives of the act or acts providing financial assistance.

(6) Whether cutting off of Federal funds for direct payments to beneficiaries was warranted.

(7) Whether it is within the scope of the Civil Rights Act, and the objectives thereof, to put into effect a regulation or requirement that the State must eventually cause all discrimination by necessary third parties to end, even though the State acts in good faith in attempting to induce or persuade such third parties to end all discrimination.

(8) Is an interpretation by the Department of Health, Education and Welfare that a private physician upon whom the State must rely desegregate the physician's waiting room as a condition to receiving Federal funds, even though the physician furnishes adequate waiting rooms, or rest rooms, and furnishes the same medical examination or treatment to all alike.

(9) Can the State be put under an obligation, as a condition to using Federal funds to pay the salaries or wages of employees who are instrumental in finding children and placing them in church homes (private), to require that such church homes end all desegregation in the acceptance of children whom they will support (where any such church home charges neither the State nor anyone else a single penny for the support and care of the child).

(d) **The Constitutional Provisions, Treaties, Statutes, Ordinances or Regulations Which the Case Involves:**

The regulations involved are shown in the record, Volume II, Appendix to the Secretary's Brief in the Court of Appeals, page 248, entitled 45 C. F. R., Part 80. It is appended hereto as Appendix D.

A particular portion of the Regulation, including a form of assurance required in implementation thereof, is quoted below under subsection (e). This involves an assurance required of the State to the effect that third parties (such as physicians, nursing homes, church homes, etc., although not specifically named in the regulation or the assurance) will not discriminate.

Title VI of the Civil Rights Act of 1964 is directly involved in this case, 42 U. S. C., § 2000d.-2000d.-4 (78 Stat. 252-253). It is appended as Appendix F.

Also involved is § 1316, Title 42, U. S. C., also contained in Appendix F.

(e) **A Concise Statement of the Case Containing the Facts Material to the Consideration of the Questions Presented.**

Alabama's five welfare programs are outlined in the District Court's decree granting the injunction (page 83 of the printed record) and are as follows:

	Social Security Act	U. S. C. A.
Title I	(Old Age Assistance and Medical Assistance to the Aged)	Title 42, § 301-306
Title IV	(Aid to Dependent Children—Alabama Program)	Title 42, § 601-606
Title V	Part 3 (Child Welfare Service)	Title 42, § 721-728
Title X	(Aid to the Blind)	Title 42, § 1201-1206
Title XIV	(Aid to the Total and Permanently Disabled)	Title 42, § 1351-1355

There is no express provision for a judicial review of the cutting off of federal funds in connection with the program under Title V, Part 3, of the Social Security Act, Title 42, Sections 721-728, Child Welfare Service, under Section 1316, Title 42; hence, our contention, among others, that this Court has no jurisdiction to entertain a petition to review the action of the Secretary as it relates to such a program, that a review under that program is within the exclusive jurisdiction of the District Court under the Administrative Procedure Act, 5 U. S. C. 705 (formerly Section 1009), a catch-all statute insuring a review in a Federal Court of competent jurisdiction where no other method of review is provided by statute or where the review provided by a statute is **inadequate** (necessarily meaning in such case a District Court). We contend also that the District Court has jurisdiction of the action filed therein as to all the programs. These contentions are developed elsewhere.

The transcript of the administrative hearing in Washington and the evidence taken therein, set forth in Volume I of the Appendix to the Brief of Appellant-Respondent, briefly describe the five programs, the plans describe them in detail (These plans were a part of the record in the District Court as well as on the administrative hearing in Washington, and are a part of the record in the United States Court of Appeals, although not printed—the Appendix to the State's Brief in the Court of Appeals, appended here, contains a brief outline of some of these factors). In that part of the volume which is characterized

as the Manual for Administration of Public Assistance, Part 1, there is set forth on page IV-13 and on IV-14 a provision for regular payments directly to the welfare recipient by mail under four of the five programs, viz., Old Age Assistance (described under Alabama law and regulation as Old Age Pension), Aid to Dependent Children (ADC), Aid to the Blind (AB), and Aid to Permanently and Totally Disabled (APTD).

Under the first of the above mentioned programs, the Old Age Assistance, persons 65 years of age and over who otherwise qualify with respect to residential and need requirements (from the standpoint that they do not have the income or sources sufficient for their support—the amount determined to be paid to each person is gauged by such standards as are set forth in the plan) receive these payments directly without regard to the physical condition of such person. If there is no discrimination as between white and Negro recipients in determining eligibility, it would seem logical that under no condition should the federal funds which make up a substantial portion of these "pensions" be cut off. Yet all through the record of the administrative hearing, questioning by the Assistant General Counsel of HEW, there stands out an indication that if the employees of the State Department are not desegregated, in the sense that a sufficient number of Negro employees interview white recipients to determine eligibility and need, or vice versa, this constitutes discrimination under the Civil Rights Act, the regulation and HEW's interpretation thereunder (the same situation exists as far as aid to dependent children is concerned).

Direct payments of this nature made for aid to the blind, and to the totally and permanently disabled, can be made only upon the determination of a physician, who certifies the condition of the recipient. As to these, it is claimed by the officials of HEW, those who interpret and

administer the Civil Rights Act, that if the physician does not have a desegregated waiting room or all desegregated facilities, in making the examination (and only one may be required), there would be such discrimination if the Alabama Department made any payment to the physician as would violate the Civil Rights Act, the regulation, and the assurance required to be signed by the State Department. This is an example of the payments to third parties in order to provide medical assistance to the aged, the blind, the disabled, and needy children, which the HEW regulation and the assurance form required to be signed proscribe.

These programs, according to the State plans, also provide benefits, involving third party payments, which may be outlined briefly as follows:

(1) Title I, Social Security Act (Old Age Assistance and Medical Assistance to the Aged), Title 42, § 301-306, U. S. C. A. Under this each eligible person over 65 years of age, in addition to direct payment or pension, may receive medical assistance by way of hospitalization, for a limited period (thirty days at the time of the administrative hearing in October, 1965), and post hospital limited medical assistance for such limited period, upon certification by a physician of the beneficiary's choice. The State paid (and now pays) the doctor for the examination ($5), and also paid a limited amount for the hospitalization (this was before medicare), and now the State pays only $40 for those entitled to receive medicare (the deductible amount under medicare), a substantial portion of all such payments being made up with federal funds. Also upon certification of a physician that nursing home care was needed, the patient would be placed in a licensed nursing home if requested, the nursing home being paid by the State (including federal money). If the family preferred to take care of the recipient, a pay-

ment would be made to the recipient for that purpose.[1] All hospitals and nursing homes are licensed by the Health Department and not the Alabama Department of Pensions and Security. Payment for nursing home care is another example of payment to a third party facility, which the Federal Department claims cannot be used,

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[1] Pertaining to the nursing home situation (the great majority of the licensed nursing homes will accept only white patients, with only one accepting both races [Administrative Hearing Transcript pages 94-95, 75; pages 115-116, 96 of Appendix to Appellant-Respondent's Brief]) and the family situation, Commissioner Ruben King, Head of the State Department, testified in part:

"A. No, I don't know how many were for colored. But I want to say I know what your inference is, because of only 13 colored nursing homes, as I stated to you. Now as I stated before, I know of no Negro who has ever applied for nursing home care that has not been able to get into a nursing home. And I think it is a credit to the Negro race that they want to keep their old people at home, because we feel like in many cases, even in regards to whites, that these old people would do better if they were in their own homes and were receiving nursing care in their own homes instead of being in a nursing home.

Q. You say it would be equally better for whites also?

A. Yes, sir, I think it would be better in many cases. I think that the nursing home care is growing at an alarming rate, not only in Alabama, but throughout this Nation, and I think the Welfare agencies in this Nation ought to concentrate on more people staying in their homes and receiving nursing care in their homes. I think that the people would probably live longer and I think it would be better for this country, certainly cheaper."

* * * * * * *

"Q. Mr. King, during your whole tenure, in your experience as the head of the State department, has there ever been an instance to your knowledge where a person of the Negro race who is eligible to go into the nursing home and who we will say who expressed a desire to go, his family did, was there ever a failure to put them in there because there was no nursing facility?

A. No, sir. We have adequate bed facilities for Negroes in the State. I would like to point out again that all of these are privately owned institutions. They are not run by the State, and if the need was there for the Negro it would be met by private enterprise just like it had been in all other instances."

however necessary, unless that facility is completely desegregated.

(2) Title IV, Social Security Act (Aid to Dependent Children—Alabama Program), Title 42, § 601-606, U. S. C. A. This involves only direct payments.

(3) Title X, Social Security Act (Aid to the Blind), Title 42, § 1201-1206, U. S. C. A. In addition to direct payments, nursing home care, or family care in the alternative, as above described, can be provided.

(4) Title XIV, Social Security Act (Aid to the Total and Permanently Disabled), Title 42, § 1351-1355, U. S. C. A. Nursing home care may be provided in addition to direct payments, with like certification and handling as above described.

With reference to the Child Welfare Service program, Title V, Part 3, Social Security Act, Title 42, U. S. C. A., § 721-728, this involves services to needy children essentially performed only by third parties. One of these is placing the child in a child care institution, for the most part church homes for children, maintained by various churches. It also involves third party services such as day care for children whose parent or parents are unable for any reason to take care of them during the day. These day care service functions are performed by private businesses, some of which accept only white children. As to the day care service, money is paid to the day care business (made up in substantial part by federal money), but as to the child caring institutions such as the church homes, no money is paid to the institution by the State, and no federal funds used, for the care and housing of the child. The only federal money expended would be to pay salaries of case workers assisting in finding the child, determining the child's needs and placing the child in the institution. Mr. King, State Commissioner, testified rela-

tive thereto.[2] (Pages 80-82 of the Hearing Examiner's Transcript; pages 101-103 of the Appendix to Appellant-Respondent's Brief.)

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[2] "A. Well, they know, the Federal officials know as well as I do. And in the conference I have discussed with them the thing that bothers us and that is particularly in the field of child care and institutions where no Federal money or State money is going to pay the money for the care of our children and yet they tell us the mere fact that they pay half the salary of case workers, of some social worker in the home, that these homes must integrate. They start off on the premise that a child is better off in an integrated——

Q. You are talking about the Federal officials?

A. The Federal officials, particularly those in the child welfare, start off on the premise that children do better in an integrated society and I disagree with them.

Q. Let's take the institutions themselves. Now what are we talking about?

A. We are talking about your Methodist homes, your Baptist homes. We are talking about your Presbyterian homes, your church homes. These people are not charging us under the State plan one penny for taking care of our children and yet we have told the Federal officials time and time again what is going to happen to these children if we have to integrate these facilities. Our job—and I want to say this, Mr. Barnes—my job as Welfare Commissioner is to see that the needy people in the State of Alabama get help. And I want to know, and I would like to bring it out in this hearing today, I want to know whether or not the Federal Government is more interested in integration or seeing that needy people get help.

I live down there with these people and I see the poor and hungry and the children that come in every day, in many cases who are half beaten to death and have burns, and my interest is in that child and to see that that child gets help. That is the reason I went to Montgomery. I am interested in those children.

Q. When you say child, you mean both white and Negro?

A. That's right.

Q. Do you have any, or do you have any Negro church homes?

A. We have some that are serving families, yes, sir, Negro children.

Q. Do you also——

A. We have some who serve in both. We have some that serve only white and some that serve only Negro, and I believe we have some that serve both.

Q. Both?

A. Yes, sir.

Q. You are talking about in the State of Alabama?

A. In the State of Alabama."

The Child Welfare Service program is the one pertaining to which no provision is made under Section 1316, Title 42, for review by a United States Court of Appeals, and the services performed involve purely payments to the third party (as in payment to day care businesses), or only payment of the salaries to employees of the Department (in case of placing children in church homes which charge the State Department nothing by way of state or federal money).

On the hearing for preliminary injunction, several affidavits were introduced in behalf of the plaintiff, the State, all of which are not shown in the reproduced record, but all of which are part of the original record in this Court. One affidavit, or a portion of one, demonstrates that irreparable injury would result from the cutting off of Federal funds on page 101 of the printed record. There it appears that Federal funds actually expended at the end of the fiscal year prior to the hearing, amounted to approximately $95,000,000, whereas State funds amounting to approximately $31,000,000 during the same period were expended. The budget for the fiscal year to end September 30, 1967, was approximately $103,000,000 of Federal funds and approximately $35,000,000 of State funds.

Appearing in the exhibits and record, although possibly not in the printed or reproduced portion, is the fact that approximately 200,000 persons in Alabama receive benefits under Alabama's welfare programs.

In question is the validity of that portion of the Federal Regulation, 45 C. F. R. 80.3, which is contained under (b), and which is set out in part on page 49 of the printed record and the validity of that portion of the form which is set out on page 50 of the printed record, with particular reference to the requirement of an assurance that the State agency will take such steps as necessary to assure that any other agency, institution or organization participating in

the program through contractual or other arrangements, will comply with the act and regulation. The validity vel non of the requirements of such an assurance relates principally to that portion of Section 602, Title 6, of the Civil Rights Act contained in the first sentence thereof as follows:

> Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Sec. 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability **which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.**

The pertinent portion of the form, DB-FS-5022 is as follows (Page 158 B, Appendix to the Secretary's Brief):

> **4. Other Agencies, Institutions, Organizations and Contractors.**
>
> The State agency **will take** such steps **as necessary to assure that any other agency, institution or organization** participating in the program, through contractual or other arrangements, **will comply with the Act and Regulation.** [Emphasis ours.]

This involves the third party payment question, one of the primary issues between the parties in this case.

We introduced evidence through the State Department's sole witness, Mr. Ruben King, the Commissioner, at the administrative hearing, that private physicians have rendered and are rendering treatment to Negroes as well as white people, giving them all the same treatment, and even providing places for them to sit, but that many pri-

vate practitioners (who receive only $5.00 per person) have refused to desegregate their waiting rooms and that in some counties, to say the least, where there was only one doctor (a white doctor), this would deprive the needy poor people of examination if as a condition to such treatment there must be a desegregated waiting room so that the poor sick people might be able to socialize while they are waiting for service.

Pertinent portions of the evidence given by Mr. King on the physician aspect of the case are set out both in the printed record and the Appendix to the Secretary's Brief (Printed record, pp. 51-53, Hearing Transcript, pp. 76-80, Appendix to Appellant-Respondent's Brief, Vol. I, pp. 76-80).

Pertinent excerpts from the evidence pertaining to the placing of children in church homes in the Child Welfare Services program have been set out in footnote in the Statement of the Case. The situation pertaining to other third party services (commonly referred to as vendor services) has been described, such as the use of nursing homes and day care centers.

Concerning institutional care, the Government's chief witness at the administrative hearing stated the position of the Government in the interpretation of the regulation and the assurance form required as follows (Miss Margaret A. Emery, Vol. I, Appendix to the Secretary's Brief, pp. 68-69):

> "Q. Then, in such a case, has the Department interpreted it this way and so instructed the states that the institution must agree or desegregate even though it does not receive any federal funds whatsoever?
>
> A. Whether or not the institution is receiving federal funds directly or indirectly is not the determining factors as to whether the state agency must require compliance under Title VI of the Act.

For example, if the children that are being placed by the state welfare department had been placed by the court in the custody of the state welfare department, then the state welfare department is responsible for providing to those children services whereby there will be no discrimination in their treatment. And if the state, under those circumstances, would not be able to use an institution which was completely segregated, it would be responsible for assuring compliance in all situations of the children who——

Q. You mean even though the state in its plan did not pay out any federal money to the institution?

A. That is correct. As I said, as an illustration I am using the children who are in the legal custody of the state welfare department."

The Federal Department's position pertaining to the meaning of the regulation and the assurance form on the physician aspect is illustrated by the testimony of Miss Emery as follows (Appendix, Vol. I, pp. 64 and 78):

"Q. May I ask if any of the discussions with which you are familiar, whether you heard it discussed or stated to the representatives of state departments, in any way, that for example under the assurance that we have given to take such steps as necessary to make the institution or agencies or persons applying, **it has been stated that for example the doctor must have a desegregated waiting room.**

A. Have I heard that stated; is that your question?

Q. Yes, ma'am.

A. Yes.

Q. All right.

A. This is also stated in writing, but wherever the state plan provides for use of private physicians, the private physician—and this is true in many states—the private physician must give the state agency as-

surance that there will be no discrimination in the treatment and the services provided to recipients of public assistance funds.

Q. That has been interpreted even to segregated waiting rooms?

A. Those are included as being within the purview of the Act."

* * * * * * *

"A. . . . But my understanding is that many states would prefer to let the individual recipient choose the physician or the arrangement for the medical care that he wished to use, but when he does that the physician is under the purview of Title VI and the Department regulations, if that arrangement is included in the state plans for public assistance."

Pertaining to the refusal to sign the form previously referred to and shown by the record, contained in the "Handbook", the State Department's position is shown on page 92 (Secretary's Appendix) in the testimony of Commissioner King on the administrative hearing:

"A. We stated—I stated to several Federal officials that we were willing to sign a compliance, that we would comply with the Civil Rights Act, that the State of Alabama, and I as Commissioner, would have a right to interpret, that as Commissioner I had as much right to interpret whether or not the rules and regulations were within the intent and scope of the law as some official here in Washington.

Q. You made a statement of what you stated, what you were willing to sign. Are you still willing to sign?

A. We are still willing to sign a statement that we are willing to comply with the law.

Q. You are talking about the Civil Rights Act of 1965?

A. Yes, sir."

There has never been a statement by the Government that such an assurance would be sufficient and the difference between what the Government absolutely required and what the State agency was willing to do involves a principal issue.

While there is no time limit set, the assurance that the State agency will take such steps as is "necessary" to assure compliance by third parties is at least a commitment that all segregation of every service, as interpreted by the Federal Department, on the part of third parties will end within a reasonable time. That this is true is clearly demonstrated by the testimony of Miss Emery on the hearing in Washington where she says, having referred previously to the "Handbook" and the regulation (pp. 43 and 44), Appendix to Secretary's Brief):

> "A. This is correct. The state plan material is required to set forth the situation in the state, and the state plan and time limit, the purpose of that and the other regulation was to provide **assurance that within a reasonable time the state would not only take steps it would accomplish compliance** with the Civil Rights Act, but there is no specific deadline set forth in the regulations nor in the handbooks of the two bureaus" [Emphasis ours].

It appears now that the government in brief and on oral argument, as shown by the opinion of the Court of Appeals, states that all that the state has to do is to try or exercise good faith, especially as far as third parties are concerned (a position that was certainly not taken in the administrative hearing), then the state should not be required to sign a rigid form that it will take such steps as to eventually assure that there will be no discrimination by third parties, or otherwise, and we are not now here to discuss whether discrimination

against Negroes should be allowed by refusal of a physician to treat Negroes (this has not occurred). We are discussing whether the State should be required to assure that the physician, for example, will not have a desegregated waiting room even though the physician furnishes a waiting room for both white and Negro and gives the same service. If the State is required only to act in good faith, all well and good, but if so, it should not be required to give assurance that it will do more. Thus, the Court of Appeals should not have held that the State was not in compliance, since the writing of the government's brief, almost two years after the administrative hearing, was the first intimation the State had was that all it had to do was try, persuade or act in good faith.

We construe the opinion of the Court of Appeals as holding that if the State does act in good faith in the respects mentioned in the opinion, the Department of Health, Education and Welfare will not be empowered validly to cut off the funds, even if the State eventually fails, though exercising every reasonable effort to obtain "compliance" by third parties. On this we beseech clarification.

There is another vital question involved and that is that although the Civil Rights Act provides that the withholding of financial assistance or the cutting off thereof shall be limited to the particular **program or activity or part thereof** (see the Act itself) in which the discrimination is practiced,[3] the assurance required by HEW may

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[3] Concerning that part of § 602 which provides that the termination or refusal of assistance shall be limited in its effect to the particular program or part thereof in which such noncompliance has been found, Senator Javits said [p. 62 BNA, "Civil Rights Act of 1964"]:

> "Let me give the Senator an example, because we discussed the question in great detail. We discussed in great detail the situation in which a contractor on Government work—that is, work in which the United States puts up

well be and probably will be construed as applying to all of the programs of a particular state agency or at least a complete program (as distinguished from a part thereof). Relative to that question, we point to the testimony of Miss Emery on **redirect** examination (pp. 72, 73, Appendix to Appellant-Respondent's Brief):

> "Q. Similarly, if a state submitted a statement of compliance which is adequate for purposes of meeting the requirements with respect to, let's say, the child welfare services under Title V, Part 3 of the Social Security Act, the fact that it didn't submit such a statement with respect to its public assistance programs would be immaterial as far as receiving child welfare services grants?
>
> Mr. Barnes: We think that is an interpretation. We object to it. They are talking about the assurance would have to be given.
>
> Hearing Examiner Irwin: If that is the objection, I will overrule it.
>
> Mr. Yourman: Would you answer the question?
>
> (The reporter read the question.)
>
> The Witness: This is correct in some situations. For example, in certain states the child welfare program is administered by a separate agency and there is a separate statement. The usual pattern **is where the programs are administered by the same agencies you have one Civil Rights branch which is applicable**

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some of the mor... Assume he is a road contractor and was discriminati... in his business against hiring Negroes, but he was not ...scriminating on that particular job.

I state for the Record that because he was discriminating generally, but was not discriminating on that job, **we could not cut off his funds** because the statute which permitted the Federal Government to put up its share of the money did not apply to the contractor's general business operations. **It applied only to the construction of the road"** [Emphasis ours].

to both child welfare and public assistance" [Emphasis ours].

For example, both the Secretary's order and the evidence show a substantial part of the State's welfare programs involve direct payments, payments **mailed** directly to the recipients, involving no possible discrimination. This is certainly a "part" of a program in which no discrimination exists, and this should have been taken into account in the decision of the Court of Appeals.

Another vital question is whether it was the intention of Congress in a case of this kind that funds be cut off at all to the prejudice and desolation of innocent beneficiaries.

§ 602 of the Civil Rights Act, the provision of Title IV which empowers the defendants to issue rules and regulations, provides expressly that any such rules, regulations or orders issued "shall be **consistent with achievement of the objectives** of the statute authorizing the financial assistance in connection with which the action is taken" [Emphasis ours]. It was for the specific purpose of prohibiting the issuance of regulations which would apply to authorize the withholding of financial assistance under, for example, programs for furnishing lunches for school children that the above quoted provision was included in this act. This is shown very clearly by the following statement of Senator Pastore (the floor leader in the Senate for Title VI) at p. 13936 of the Congressional Record of June 19, 1964:

> "Let me advise Senators that the failure of a district court to desegregate the schools will not jeopardize the school lunch program; it absolutely will not. Even if a community does not desegregate, that will not jeopardize the school lunch program—**unless in that particular school the white children are fed, but the black children are not fed**; and I refer Senators to page 33 of the bill, which states very, very

clearly: 'which shall be consistent'—in other words, the orders and rules—'shall be consistent with the achievement of the objectives of the statute authorizing financial assistance.'

"**We have a school lunch program, and its purpose is to feed, not to desegregate the schools; therefore, that would not be consistent.** But if a school district did not desegregate, it could no longer get federal grants, let us say, to build a dormitory—not unless it integrated; and a hospital could not receive 50 percent of the money with which to build a future addition unless it allowed all American citizens who are taxpayers and who produce the tax funds that would be used to build the addition, to have access to the hospital.

"So we must remember that **the shutting-off of a grant must be consistent with the objectives to be achieved. A school lunch program is for the purpose of feeding the school children. If the white children are fed, but the black children are not fed, that is a violation of this law.**" [Emphasis ours.]

This statement demonstrates what Congress meant by the term "discrimination"—that in the use of that term in § 601 of the Act, it was intended only that all children should be entitled to the benefits of the school lunch program, not to cause the "desegregation" of the schools in which funds received under such programs are used. It is evident that the use of the word "discrimination" in Title VI was used selectively.

If, as the floor leader for Title VI said (Senator Pastore), the act when applied to feeding children in school contemplated merely that all the children be fed, Negro and white, and in essence that the word "discrimination" as used in the act did not require that the children be integrated while being fed, then we do not see how the act can be construed as requiring that there be a min-

gling together in waiting rooms, or in nursing homes, or in institutions assuming the care of children. The purpose of these programs is to treat the sick, and to care for the poor, and so long as the treatment and care are provided for all, then there is no discrimination under such program within the meaning of the Civil Rights Act. Thus, the assurance required, the guaranty, in effect, that there must be absolutely desegregated waiting rooms or nursing homes or institutions for child care, goes beyond the scope of the Civil Rights Act.

We next quote from Senator Saltonstall of Massachusetts:

> "Furthermore, it is important to note that section 602 states that any rules or regulations established to effectuate the provisions of this title 'shall' be consistent with achievement of the objectives of the statute authorizing the financial assistance.' Thus, where Federal funds are used to feed needy children through a program which is operated on a segregated basis, **this section does not intend that the children be deprived of the food because the administrators of the program are violating the law.** However, we cannot justify the expenditure of Federal funds collected from all citizens on programs which are being administered in a way which clearly deprives some of them of the equal protection of the laws." [Emphasis supplied.] (110 Con. Rec.—Senate, Number 11, page 12263.)

Senator Saltonstall was, as we understand it, the Chairman of the Bi-Racial Senate Conference whipping the final version of the substitute into effect, as finally passed, and made the above statement shortly before the passage. This statement, we submit, is entitled to great weight.

We also quote from Senator Ribicoff:

> "The remedies provided by section 602 are withholding of assistance and any other means authorized

by law. In general, the consistent-with-the-objectives requirement would make withholding of funds a last resort, to be used only when other means authorized by law were unavailable or ineffective.

"To make that clear: The withholding of funds would be the last step to be taken only after the administrator or the agency had used every other possible means to persuade or to influence the person or the agency offending to stop the discrimination.

"Seventh. Looking first to the **'other means authorized by law,'** the agency could, for example, ask the Attorney General to initiate a lawsuit under Title IV, if the recipient were a school district or public college; or the agency could use any of the remedies available to it by virtue of its own 'rule, regulation, or order of general applicability.' For example, the most effective way for an agency to proceed would often be to adopt a rule that made the nondiscrimination requirement part of a contractual obligation on the part of the recipient. Then violation of such a requirement would normally give the agency the right to bring a lawsuit to enforce its own contract; or, **in the absence of a technical contract,** the agency **would have authority to sue to enforce compliance with its own regulations.** All of these remedies have the obvious advantage of seeking to end the **discrimination, rather than to end the assistance.**" [Emphasis supplied.] (110 Con. Rec. 6846-6847, daily ed., April 7, 1964.)

These examples, statements from responsible leaders of the Senate, illustrate that the cutoff of funds in cases of this kind, where innocent people will suffer by reason thereof, is a last resort; and Senator Ribicoff indicates that the Federal agency could and should adopt a regulation affording a remedy against discrimination and forcing a State agency, if accepting funds, to desist from any discrimination complained of, prior to the cutting off of

funds. The Civil Rights Act applies to every form of financial assistance by way of grant, loan or contract. For example, if a contractor with the Government practiced discrimination, the Federal agency involved might terminate the contract and cut off the funds, without being compelled to use other means. However, it is not consistent with the objectives of the Social Security Act that aid be withheld from those who do not have anything to do with compliance, such as the white and Negro beneficiaries. Thus, the beneficiaries should not be victimized and excluded from the aid which the law intended they should have.

(g) The Basis for Federal Jurisdiction in the Court of First Instance.

This has already been shown. We contend that the District Court had jurisdiction of the entire case, having judicial review under the Administrative Procedure Act, above mentioned, or if not the entire case, a part of the case, and that where the jurisdiction of the District Court may fail, the jurisdiction for direct review was vested in the Court of Appeals, of the Secretary's order.

(h) A Direct and Concise Argument Amplifying the Reasons Relied on for the Allowance of the Writ.

The United States Court of Appeals for the Fifth Circuit has decided important questions of Federal law, which have not been, but should be, settled by this Court.

A.

The court below erred in concluding the district court was without jurisdiction.

1. In order to conclude that the District Court was wholly without jurisdiction of the action against the Secretary, it was necessary for the Court of Appeals to

hold that the provisions of Section 603 of the Civil Rights Act and 42 U. S. C., § 1316, confer upon the Court of Appeals exclusive jurisdiction to review an order terminating the payment of federal funds under Title V (part 3) of the Social Security Act, which relates to Child Welfare Services.[4] Since the provisions for statutory review in the Court of Appeals (42 U. S. C., § 1316) do not provide for review of determinations by the Secretary relating to part 3 of Title V (Child Welfare Services),[5] the Court of Appeals reached its conclusion by holding that by granting jurisdiction to review determinations under other portions of the Social Security Act, § 1316, "vest(s) in this court **by implication** the authority to review the Secretary's order with respect to Title V (part 3).

A Federal Court of Appeals, having no general original jurisdiction like that of the district courts, has only such jurisdiction as "is specifically conferred by legislation relating specifically to the determinations of such agencies made subject to review, and prescribing the manner and extent of the review." **American Federation of Labor v. National Labor Relations Board**, 308 U. S. 401, 404. The provisions of 42 U. S. C., § 1316, do not specifically

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[4] Title V of the Social Security Act is divided into four separate parts. Part 1 is titled "Maternal and Child Health Services" and is codified as 42 U. S. C., §§ 701-705; part 2 is captioned "Services for Crippled Children" and is codified as 42 U. S. C., §§ 711-715; part 3, providing Child Welfare Services, is codified 42 U. S. C., § 721-28.

[5] § 1316 of 42 U. S. C. provides for review in a Court of Appeals only of "final determinations" of the Secretary under § 304 (Title I of the Social Security Act, providing old age assistance), 604 (Title IV providing aid to needy families), 1204 (Title X providing aid to the blind), 1354 (Title XIV providing aid to the totally disabled), 1384 (Title XVI providing aid and medical assistance for the aged), and 1396d. (Title XIX providing medical assistance for the aged). § 1316 does not provide for any review of any action by the Secretary relating to Title V generally or to part 3 of Title V specifically.

confer jurisdiction in a court of appeals to review determinations or other action by the Secretary with respect to Title V of the Social Security Act. The opinion below holds nevertheless that the court of appeals has jurisdiction to review action of the Secretary terminating funds provided under Title V (part 3) because section 1316 makes provision for review by courts of appeal of determinations by the Secretary under **other titles** of the Social Security Act. As an additional reason for its conclusion that it had exclusive jurisdiction to review the termination of assistance under Title V (part 3) it cites the relationship between Titles IV and V of the Social Security Act. There is no basis in either the statutory scheme of the Social Security Act and the Civil Rights Act or in the pertinent decisions of this court for a conclusion that a court of appeals has "implied jurisdiction to review an order of the Secretary with respect to Title V" (part 3).

First, not only does section 1316 not contain any reference to review of determinations by the Secretary under Title V (part 3), but there is not even any provision authorizing the Secretary to terminate payments for Child Welfare Services under Title V (part 3). Plainly, therefore, the action of the Secretary under Section 602 of the Civil Rights Act in terminating assistance to Alabama under Title V (part 3) does not constitute "similar action taken by such department or agency on other grounds" within the intended meaning of Section 603 of the Civil Rights Act relating to judicial review. Since the Social Security Act does not contemplate or permit any action by the Secretary for the termination on a statewide basis of payments under Title V (part 3), there patently is no basis for a conclusion that it was intended by congress in 42 U. S. C., § 1316, to provide for review of a determination to discontinue payments for child welfare services.

Secondly, the conclusion of the court of appeals that it has statutory jurisdiction to review a termination of assistance under Title V (part 3) on the ground of a provision for its jurisdiction to review orders terminating assistance under other titles of the Social Security Act is inconsistent with decisions of this Court construing the scope of statutory review in the courts of appeals under similar statutes. In other similar statutes providing review by courts of appeals, provision often is made for review by a court of appeals of certain specific orders or types of agency action while omitting any provision for review of other similar agency orders or action. See **American Federation of Labor v. National Labor Relations Board**, 308 U. S. 401; **Abbott Laboratories v. Gardner**, ... U. S. ..., 87 S. Ct. 1507 (May 22, 1967). In no such instance has it ever been contended that simply because the agency action sought to be reviewed is taken under the same or related statutory authority as is other action for which review is authorized, the grant of jurisdiction to the court of appeals to review one type of action confers "implied" jurisdiction to review other agency actions for which review is not specifically provided.

A strikingly similar situation existed in **Abbott Laboratories v. Gardner**, supra. There, Section 701(f) of the Food, Drug and Cosmetic Act, 21 U. S. C., § 371(f), provided for jurisdiction in a court of appeals to review orders of the Secretary upon objections to regulations issued under certain specified sections of the Act, including Section 502(d), 21 U. S. C., § 352(d). It made no provision for review by a court of appeals of any action by the Secretary on a regulation issued under Section 502(e) of the Act, 21 U. S. C., Sec. 352(e). Both subsections (d) and (e) of § 502 of the Act dealt with similar subject matter (labels required to be affixed to certain drugs) and obviously any action taken by the Secretary under either subsection would have a similar effect upon drug manufac-

turers. Yet, it was not even suggested that, as the court below now holds in the present case, a court of appeals had exclusive jurisdiction to review an order relating to Section 502 (e) of that Act simply because of the existence of provision for statutory review of orders under Section 502(d) of the Act. Indeed, an implication of jurisdiction such as the court below finds would have rendered a decision in **Abbott Laboratories**, supra, wholly unnecessary. The same is true of the statutes involved in **Gardner v. The Toilet Goods Association**, ... U. S. ..., 87 S. Ct. 1526 (May 22, 1967), which provided for review by a court of appeals of regulations that deny petitions for listing, certification, or exemption of certification of color additives[6] but contained no provision for review of regulations defining the term "color additive". Certainly if "implied" jurisdiction to review exists in the present case it also existed in those cases.

Section 603 of the Civil Rights Act provides for a judicial review in accordance with section 10 of the Administrative Procedure Act, 5 U. S. C., § 703 (1966), in the case of agency action taken under section 602 of the Civil Rights Act which is "not otherwise subject to judicial review". Inasmuch as there is no statutory provision for a judicial review by the Court of Appeals of the Secretary's action in terminating child welfare assistance under Title V (part 3) of the Act, jurisdiction in the district court under Section 10 of the Administrative Procedure Act is available at least with respect to the action taken by the Secretary in terminating funds payable under Title V (part 3).

The fact that 42 U. S. C., § 1316 provides for review by the Court of Appeals of action by the Secretary in terminating funds under other titles of the Social Security Act

[6] Food, Drug, and Cosmetic Act, § 706(d), 21 U. S. C., Sec. 376(d).

does not make that jurisdiction exclusive if the remedy in the Court of Appeals is unavailable or inadequate. **Utah Fuel Company v. National Bituminous Coal Commission,** 306 U. S. 56; **United States v. Interstate Commerce Commission,** 337 U. S. 426; **Gardner v. The Toilet Goods Association,** ... U. S. ..., 87 S. Ct. 1526; 3 Davis, Administrative Law, § 23.03 (1958); 5 U. S. C., § 703 (1966). Since the Court of Appeals does not have and cannot acquire original jurisdiction to review the action of the Secretary in terminating assistance under Title V (part 3) and the only tribunal in which petitioners could obtain relief for a stay of the Secretary's action in terminating assistance for child welfare services was the district court, the statutory procedure for review in the Court of Appeals cannot be considered adequate so as to prevent equitable relief in the District Court since the statutory review provisions did not cover the entire case made by petitioners' complaint. **Hillsborough Township v. Cromwell,** 326 U. S. 620, 629; **Greene v. United States,** 376 U. S. 149, 163. Consequently, the district court had the power and the authority under section 10 of the Administrative Procedure Act and section 603 of the Civil Rights Act to exercise its original jurisdiction over the entire case in order to afford adequate and complete relief to the petitioners. See **Hillsborough Township v. Cromwell,** supra, 326 U. S. at 629.

2. The decision of the Court of Appeals as to its jurisdiction does not take into proper account the fact that a main thrust of the petitioners' complaint in the district court was not to review the order of the Secretary terminating assistance under the pertinent programs but to secure a declaration that the regulations (45 C. F. R. 80) issued by the Secretary are "in excess of the authority and powers" of the Department of Health, Education & Welfare under "Title VI of the Civil Rights Act" (Record, Vol. II, pp. 9-11). Accordingly, the statutory provisions

for review of agency determinations under 42 U. S. C., § 1316 are inapplicable because the suit in the district court was "not one to 'review' . . . a decision of the [agency] made within its jurisdiction", but rather was "one to strike down an order of the [agency] made in excess of its delegated powers." **Leedom v. Kyne**, 358 U. S. 184, 188; **c. f. American Federation of Labor v. National Labor Relations Board**, 308 U. S. 401, 412. Furthermore, the issuance of the regulations by the Secretary does not constitute agency action for which judicial review is "otherwise . . . provided by law for similar action."[7] The review in the Court of Appeals provided by 42 U. S. C., Sec. 1316 relates only to a final determination by the Secretary that further payments will be terminated on the ground that the state plans no longer comply with the requirements for such plans under 42 U. S. C., § 304, 604, 1204, 1354, 1384, or 1396c. There is no provision for judicial review by the Court of Appeals of any regulation of the Secretary issued under the Social Security Act. Plainly, therefore, the statutory review provided by 42 U. S. C., § 1316 does not exclude the jurisdiction of the district court to adjudicate the validity of the Secretary's regulations on the ground that, as alleged by the petitioners' complaint, they exceed the authority and power delegated to the Secretary by the Civil Rights Act of 1964. **Leedom v. Kyne**, supra; **Abbott Laboratories v. Gardner**, supra.

3. Prior to the hearing in the District Court the complaint was amended to add as parties plaintiff four individuals who are recipients of federal funds administered under the programs as to which the Secretary's order terminated further payments (Record, Vol. II, pp. 70-72). Since the statutory provisions for review in the Court of Appeals under 42 U. S. C., § 1316 clearly apply only to

[7] Section 603, Civil Rights Act of 1964.

actions by a state and since section 603 of the Civil Rights Act of 1964 contemplates that there may be "persons aggrieved" other than a state or political subdivision for whom the remedies available under section 10 of the Administrative Procedure Act would be applicable, the district court would have jurisdiction over an action by those private individuals if they have standing and constitute "persons aggrieved" within the meaning of section 603. The Court of Appeals declined to consider and decide the effect of the joinder of the individuals as plaintiffs except to the extent of concluding that their joinder "does not defeat the sole and exclusive jurisdiction" of the Court of Appeals over "actions brought by a state" (Opinion, p. 18). The opinion below concluded that the issues relating to the standing of the private litigants and the propriety of their joinder with the State of Alabama "are issues which are not before us".

The petitioners submit that because the private individuals had been made parties at the time of the judgment in the district court and since the existence of a federal court's subject matter jurisdiction is always open to inquiry, the Court of Appeals should have determined whether the individual plaintiffs have standing and whether the District Court had jurisdiction over their actions against the Secretary. For if the individual plaintiffs have standing to challenge the actions of the Secretary and are "persons aggrieved" within the meaning of Section 603, their joinder with the State of Alabama as a plaintiff in the District Court would not affect their individual rights to an adjudication of the merits of the complaint in the district court regardless of the right of the State of Alabama to such an adjudication.

As direct beneficiaries of the funds administered under the programs of the Social Security Act as to which the Secretary terminated further payments, the individual

plaintiffs are the persons primarily affected by the action of the Secretary. In pertinent part, section 603 provides that upon termination of financial assistance, "any person aggrieved (including any state or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act. . . ." By its use of the word "including" it is clear that the provision for review is intended to encompass persons other than the state which administers the program. Other than the state, the only persons who could possibly be considered "persons aggrieved" by agency action terminating the continuance of financial assistance are those persons, such as the individual plaintiffs and petitioners in the present case, who are the recipients of funds administered under these programs. **Cf. Freeman v. Brown**, 342 F. 2d 205 (5th Cir. 1965); **FCC v. Sanders Bros. Radio Station**, 309 U. S. 470; Jaffe, "Standing to Secure Judicial Review: Private Actions," 75 Harv. L. Rev. 255 (1961). See Note, "Federal Judicial Review of State Welfare Practices", 67 Colum. L. Rev. 84, 117-29 (1967). Unless it be shown, and it has not, that it was specifically intended by Congress that private persons who are beneficiaries of the programs as to which provision is made in Title VI of the Civil Rights Act for termination of funds are not "persons aggrieved," those persons should clearly have standing to challenge the validity of actions of the Secretary in terminating further financial assistance under those programs. In failing to consider and decide the effect of the joinder of the private individuals as plaintiffs in the District Court and to pass upon their standing to challenge the validity of the Secretary's action in the present case, the Court of Appeals effectively deprives these persons of the remedy which Congress intended to confer upon them by Section 603 of the Act.

B.

In addition to the jurisdictional questions discussed in which we contend that the United States District Court, Northern District of Alabama, had jurisdiction and that the Court of Appeals erred in holding otherwise, we think the reasons relied on for allowance of the writ, as far as these questions are concerned, have been amplified in the foregoing sections of this petition, and we adopt with leave of this Court such amplification particularly set out under section or subsection (e) above.

All appendices required by these rules are attached, with the exception of the judgment or judgments of the United States Court of Appeals which we now append as Appendix E (the opinion of the Court of Appeals has been appended).

For the reasons advanced, this Petition for a Writ of Certiorari should be granted.

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